

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 26**

THE WACKENHUT CORPORATION
Employer¹

and

Case 26-RC-8448

**UNITED GOVERNMENT SECURITY OFFICERS
OF AMERICA, LOCAL NO. 23**
Petitioner

and

**INTERNATIONAL UNION, SECURITY, POLICE
AND FIRE PROFESSIONALS OF AMERICA,
LOCAL NO. 737**
Intervenor²

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

The Employer, The Wackenhut Corporation, provides guard and security services to clients throughout the United States. In this case, the Employer's client, Entergy, is the owner and operator of a power nuclear plant referred to as Arkansas Nuclear One located in Russellville, Arkansas.

The Petitioner, United Government Security Officers of America, Local No. 23, filed a petition on November 1, 2004 with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of the Employer's security guards at the Russellville facility. The Intervenor, International Union, Security, Police and Fire Professionals of America, Local No.

¹ The Employer's name appears as amended at hearing.

² The International Union, Security, Police and Fire Professionals of America, Local No. 737 requested to intervene in this matter. Based upon its status as the current collective-bargaining representative, that request is hereby granted.

737, is currently recognized as the bargaining representative of these employees. There are about 124 employees in the bargaining unit.

A hearing officer of the Board held a hearing at which only the Employer and the Petitioner appeared. After the hearing, the Intervenor filed a brief with me.

As evidenced at the hearing and in the brief filed by the Intervenor, the basic issue in this proceeding is whether there is a contract bar to the petition. The Employer and the Intervenor contend that the contract between the Intervenor and the Employer renewed on November 1, 2004 pursuant to the automatic renewal provisions of the contract and that this renewed agreement is a bar to the Petition. The Petitioner argues there is no contract bar for three reasons: (1) the agreement was not ratified by the members; (2) the Intervenor has abandoned the unit; and (3) the International Union failed to sign the agreement.

As explained below, I find that the evidence is insufficient that ratification of the agreement was required and that the alleged inaction by the Intervenor does not preclude the contract serving as a bar. However, because the International Union is a party to the agreement, I find the International's failure to sign the agreement precludes the agreement from serving as a bar to the petition. I am, therefore, directing an election in the petitioned-for unit.

To provide a context for my discussion of these issues, I will first provide some background on the contract. Then, I will discuss the facts and reasoning that support each of my conclusions.

I. Background

On June 15, 2001, the International Union, Security, Police and Fire Professionals of America, (SPFPA) was certified by the Board to represent a unit of the Employer's full-time and regular part-time security officers employed at the Arkansas Nuclear One Station.³ Only the International Union was certified, not the local union. Thereafter, a collective-bargaining agreement was negotiated which provided that it was effective from November 1, 2001 until midnight October 31, 2004 and from year to year thereafter unless 60 days notice was given prior to the end of the term of the agreement. The agreement was executed on October 29 and 30, 2001.

The Employer's Director of Labor Relations stated at hearing that the contract had rolled over on November 1, 2004 pursuant to the automatic renewal provisions of the agreement. The Intervenor agrees that the contract rolled over and the Petitioner does not dispute this assertion. No party disputes that the agreement has been in effect since November 1, 2001.

II. Contract Bar Issues

Although the agreement automatically renewed on November 1, the petition was also filed on November 1. In *Deluxe Metal Furniture Company*, 121 NLRB 995, 999 (1958), the Board held that if a contract renews the same day as the petition is filed, the contract can act as a bar unless the employer is aware of the filing of the petition when the contract renews. In this case, there is no evidence that the Employer was aware of the petition when the collective-

³ I take official notice of the Certification of Representative in Case 26-RC-8253. For the convenience of the parties, a copy is attached to this decision.

bargaining agreement automatically renewed at 12:01 a.m. Accordingly, I consider the Petitioner's arguments about why the contract should not serve as a bar.

A. Ratification of the Agreement

1. Facts

The Petitioner contends that the current contract is not a bar because it was not ratified by the members as required by Appendix B to the contract.

Appendix B is a Letter of Understanding regarding overtime, that was executed on October 29 and 30, 2001, the same dates as the original agreement.

Appendix B provides in pertinent part:

Whereas: The Employer agrees, subject to ratification to provide employees who volunteer for overtime work which is subject to cancellation two (2) hours of pay at his/her base straight time hourly rate if they are not used for said overtime work.

The next paragraph of Appendix B states that "Whereas: The Union agrees that such payment reflects the full and complete understanding of the parties on the cancellation issue." This paragraph, unlike the paragraph reciting the Employer's agreement, contains no mention of ratification. Nor is ratification mentioned elsewhere in the body of the agreement or in Appendix A, the other attachment to the agreement.

There was no evidence offered at hearing about whether ratification had occurred.

2. Analysis

In *Appalachian Shale Products*, 121 NLRB 1160, 1163 (1958), the Board stated that if the contract itself contains no express provision for prior ratification,

“prior ratification will not be required as a condition precedent for the contract to constitute a bar.” Here the only language that arguably requires ratification is contained in Appendix B.

I find that language in Appendix B is too ambiguous to require employee ratification of the contract as a condition precedent for the contract to serve as a bar to the petition. First, I note that the language states that the *Employer*, not the Union, agrees subject to ratification. It does not say ratification by whom. Second, even assuming that the language is interpreted to mean ratification by union members, I note that the language exists only in Appendix B and not to the entire collective-bargaining agreement and could be interpreted to apply only to the overtime issue covered in Appendix B.

B. Abandonment of the Unit

1. Facts

The Petitioner claims that the Intervenor has abandoned the unit because the Intervenor has few members and has not conducted elections of union officers, filed grievances, responded to members, or negotiated a new contract. At hearing, an employee testified that currently only 17 of the 124 unit employees are members of the Intervenor. He also testified that during the two years he has been a member of the Intervenor, there have been no election of officers despite union guidelines requiring yearly elections of officers. The employee further testified that although unit employees had been discharged during that time, no grievances had been filed. He also testified that he has sent correspondence to the International Union concerning the publishing of financial statements and auditing of local union funds, but he has not received an answer.

2. Analysis

A contract does not bar an election if the contracting representative is defunct. *Hershey Chocolate Corp.*, 121 NLRB 901,911 (1958); *International Harvester Co.*, 111 NLRB 276 (1955). However, the relative inactivity of the union is irrelevant to a defunctness determination. See *Rocky Mountain Hospital*, 289 NLRB 1347, 1350 (1988). Nor is the loss of members equivalent to defunctness if the representative otherwise continues in existence and is willing and able to represent the employees. *Hershey Chocolate Corp.*, *supra*. Accordingly, I find the evidence here is insufficient to find that the Intervenor is defunct. Therefore, this evidence does not provide a basis for finding the contract is not a bar.

C. Failure of all Parties to Sign the Agreement

1. Facts

The Preamble of the contract states that the agreement is entered into “by and between International Union, Security, Police and Fire Professionals of America (SPFPA) and its amalgamated Local No. 737, SPFPA, hereinafter referred to as the Union” and the Employer. (Emphasis in original.) Article 1 of the contract states that as certified by the Board in Case 26-RC-8253, the Employer recognizes “the Union” as the exclusive-bargaining representative for the unit.

The signatures of the parties to the collective-bargaining agreement are located on page 27. There are two columns for the signatures, with each side having lines for three signatures, titles and dates of signatures.

The heading at the top of the left column says "THE WACKENHUT CORPORATION." Immediately below that heading are lines containing the signature of the Vice-President for Labor Relations for the Employer, his title, and the date. Below that is the signature of the Employer's Director of Nuclear Operations, his title, and the date. Below that is the signature of the Project Manager TWC/ANO, his title and the date of his signature.

The heading at the top of the right column says "POLICE AND FIRE PROFESSIONALS OF AMERICA (SPFPA) AND ITS AFFILIATED LOCAL." (Emphasis added.) Under this heading are two signatures, their titles, and the dates of their signatures. The first signature is that of Brian Vire. The handwritten title appearing below his name is "President Local 737." The date of his signature is October 30, 2001. The second signature is that of James Hamilton. The handwritten title appearing below his name is "Vice President Local 737." The date of his signature is October 30, 2001. Three lines for name, title, and date appear below this but are blank. There is no signature by anyone designated as an official of or on behalf of the International Union, Security, Police and Fire Professionals of America.

The Intervenor claims that there is no evidence that the Local Union officials did not sign on behalf of the International Union. Specifically, the Intervenor notes certain language below Article 25 that states "the parties caused this Agreement to be signed by their duly authorized representatives this day, month, and year set forth above." Thus, the Intervenor argues that the signing of

the agreement was valid and the automatic renewal of the agreement serves as a contract bar.

The Employer's Director of Labor Relations stated at the hearing that the Employer "believed" that the Union's local representative was "authorized to sign on [the International's] behalf." However, he was not the Director of Labor Relations when the agreement was negotiated and offered no personal knowledge that such authorization existed. Nor was there any other documentary evidence or sworn testimony adduced at the hearing regarding what authorization the Local Union representatives had or did not have from the International Union when signing the collective-bargaining agreement.

2. Analysis

I find that the renewed collective-bargaining agreement between the Employer and the Intervenor does not serve as a bar to the petition because the contract was not signed by one of the parties, the International Union.

In an effort to simplify and clarify the application of the contract bar rule, the Board adopted a rule in *Appalachian Shale Products*, 121 NLRB 1160, 1162 (1958) providing that to constitute a bar, the contract must be signed by all parties prior to the filing of the petition. The Board there said:

[A] contract to constitute a bar must be signed by all the parties before a petition is filed and that unless a contract signed by all the parties precedes a petition, it will not bar a petition even though the parties consider it properly concluded and put into effect some or all of its provisions. *Id.*

That rule has been applied in circumstances such as here, where the local and international are named as parties to the agreement but only one entity

signed the contract prior to a petition being filed. In *Crothall Hospital Services, Inc.*, 270 NLRB 1420, 1422 (1984), the Board applied the *Appalachian Shale Products* rule and held that the contract would not serve as a bar where the international had not signed the contract that in its preamble described the contracting parties as the employer, the national union, and the local union. *Ibid.* The Board explained that by adding the national union as a named party to the agreement, the parties made it necessary for the national union to sign the agreement in that capacity in order for the agreement to constitute a bar to a petition. *Id.* at 1423.

Similarly, in *H. W. Rickel & Co.*, 105 NLRB 679 (1953) the preamble to the collective-bargaining agreement specified that the contract was entered into between the employer, the international union, and the local union. The international union was the last to sign the agreement, but it signed after the petition had been filed. Thus, the Board found that the contract was not a bar to the petition because a named party to the contract, the international union, had not signed the contract before the petition was filed. *Ibid.*

Here, the certified exclusive bargaining representative of the unit is the International Union of the Intervenor, not the Local Union. While the “Preamble” to the collective-bargaining agreements adds the Local Union as an additional representative of the unit, the fact remains that there is not a signature on the collective-bargaining agreement identified as an official of or on behalf of the International Union. As a result, the International Union as a party to the collective-bargaining agreement failed to sign the document; but, more

importantly, the International Union as the certified exclusive bargaining representative failed to sign the document. Therefore, the collective-bargaining agreement cannot serve as a bar to the petition. See *Crothall*, supra, and cases cited therein.

The Intervenor correctly notes that there is no evidence that the two Local Union officials that signed the collective-bargaining agreement did not have authority to sign on behalf of the International Union. However, there is also no evidence that they did have such authority. The Intervenor relies upon the language of the document that the parties' "duly authorized representatives" located above the signatures. However, such reliance is negated by the fact that the Union officials who actually signed the collective-bargaining agreement signed it specifically as the President and Vice-President of the Local Union. There is simply no indication in the document that the Local Union officials signed the collective-bargaining agreement on behalf of the International Union. Hence, there is no evidence that the two union signatories had any authority from the certified bargaining representative, the International Union, to sign the agreement on behalf of the International.

It is true that this case is different from *Crothall* in that here the contract is an automatic renewal of a contract that had been in effect for three years and *Crothall* involved a new agreement that slightly modified a prior agreement. However, the Intervenor has provided no Board authority establishing an exception in the circumstance of an automatic renewal and in *Appalachian Shale* the Board specifically stated that all parties to a contract must sign that contract

even a contract whose terms have been in effect in order for the contract to be a bar to a petition. 121 NLRB 1160 at 1162. Finally, I note that the Board has held that the burden of proving that a contract is a bar is on the party asserting the doctrine. *Roosevelt Memorial Park*, 187 NLRB 517 (1970). See also *Lexington House*, 328 NLRB 894, 900 (1999).

Based upon the foregoing, I find that the Intervenor has not met its burden of establishing a contract bar because there is no evidence that the International Union, either signed or authorized anyone to sign the contract on its behalf.

III. CONCLUSIONS AND FINDINGS

Based on the entire record in this proceeding, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in these cases.
3. The Petitioner and the Intervenor are labor organizations within the meaning of the Act and each claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:⁴

INCLUDED: All the full-time and/or regular part-time security officers performing guard duties as defined in Section 9(b)(3) of the Act employed by the Employer at the Arkansas Nuclear One Station.

EXCLUDED: All office clerical employees, all other non-security employees, Security Shift Commanders, Assistant Shift Commanders, CAS/SAS Supervisors, CAS Operator Supervisors, professional employees other than supervisors as defined by the Act, and all other employees.

IV. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by United Government Security Officers of America, Local No. 23. or by International Union, Security, Police and Fire Professionals of America, Local 737, or by Neither. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill,

⁴ No party contends that the contractual unit is not appropriate. It differs from the certified unit in that the exclusions in the contract are described differently. Accordingly, I am directing an election in the unit described in the contract.

on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that began less than 12 months before the election date and who retained their status as such during the eligibility period, and the replacements of those economic strikers. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or

by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, 1407 Union Avenue, Suite 800, Memphis, TN 38104, on or before **December 17, 2004**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (901) 544-0008 or at (615) 736-7761. Since the list will be made available to all parties to the election, please furnish a total of **three** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

V. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **December 27, 2004**. The request may **not** be filed by facsimile.

Dated at Memphis, Tennessee, this 10th day of December 2004.

/S/

Ronald K. Hooks, Regional Director
Region 26,
National Labor Relations Board
1407 Union Avenue, Suite 800
Memphis, Tennessee 38104-3627

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

RC-RM-RD
(non-D)

<p>THE WACKENHUT CORPORATION</p> <p>Employer</p> <p>and</p> <p>INTERNATIONAL UNION, SECURITY, POLICE AND FIRE PROFESSIONALS OF AMERICA (SPPFA)</p> <p>Petitioner</p>
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TYPE OF ELECTION
(CHECK ONE)

☐ CONSENT

☒ STIPULATED

☐ RD DIRECTED

☐ BOARD DIRECTED

(ALSO CHECK BOX
BELOW WHEN APPROPRIATE)

☐ 8(b)(7)

CASE 26-RC-8253

CERTIFICATION OF REPRESENTATIVE

An election has been conducted under the Board's Rules and Regulations. The Tally of Ballots shows that a collective-bargaining representative has been selected. No timely objections have been filed.

As authorized by the National Labor Relations Board, it is certified that a majority of the valid ballots have been cast for
INTERNATIONAL UNION, SECURITY, POLICE AND FIRE PROFESSIONALS OF AMERICA
(SPPFA)

and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit.

UNIT: Included: All full-time and regular part-time security officers performing guard duties as defined in Section 9(b)(3) of the Act employed by The Wackenhut Corporation at Arkansas Nuclear One in Russellville, Arkansas.

Excluded: All office clerical employees, professional employees, Central Alarm Station (CAS) operators, Secondary Alarm Station (SAS) operators, and supervisors as defined in the Act.



Signed at Memphis, Tennessee
On the 15th day of
June 2001

Ronald K. Hooks
Regional Director, Region 26
National Labor Relations Board